IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.5933 OF 1996

Goodlass Nerolac Paints Ltd. a Company incorporated under the Companies Act, 1956, having its Factory and Registered Office at Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013 and its factory at Kavesar village Thane ..Petitioners

Versus

1. Paints Employees Union a trade union registered under the Trade Unions Act, 1926, having its regsitered office at Shri.T.K.Walawalkar, B-2/9, Jeevan Beema Nagar Mithagar Road, Mulund (East), Mumbai-400081

2. Shri.T.M.Mantri, Member, Industrial Tribunal Maharashtra, Mumbai having its office at Arun Chambers, 7th floor Tardeo, Mumbai-400034 ..Respondents

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Mr.C.U.Singh with Mr.Noraj Jalota i/b M/s.Sanjay Udeshi for Petitioner
Mrs.Meena Doshi for Respondent

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CORAM : B.H.MARLAPALLE,J.

DATE OF RESERVING THE JUDGMENT : APRIL 19, 2005

DATE OF PRONOUCING THE JUDGMENT : MAY 06, 2005

JUDGMENT:

1. This petition impugns the Award dated 30.9.1996

passed by the learned Member of the Industrial Court at Mumbai in Reference (IT) Nos. 4 of 1987 and 52 of 1989 to the extent of granting the revision of wage scales and extension of staff dearness allowance to the daily rated workmen. While admitting the Writ Petition by an order dated 22.1.1997, the operation of the impugned Award was stayed in so far as it related to the wage scale and dearness allowance only. This Court then referred to the settlement arrived at between the parties on 22.8.1991 and directed the Petitioner-company to pay double the amount every month from 1.4.1991 and to continue to pay accordingly. It appears that this order dated 22.1.1991 was challenged in Letters Patent Appeal but without success and even before the Apex Court the Petitioner-company could not obtain any relief.

2. The Petitioner is a public limited company incorporated under the Companies Act, 1956 with its registered office at G.K.Marg, Lower Parel, Mumbai and one factory at the same place and another factory located at Kavesar village in Thane District. The Company also has a factory at Kanpur but the impugned award concerns the establishments at Mumbai and Thane. The Respondent-Union is a trade union registered under the Trade Unions Act, 1926. The Union has been representing the workers employed by the Petitioner for a long time and it had entered

into various settlements with the Company for revision of wages and other service conditions. The last such settlement was arrived at on 1.6.1984 and it was to remain in force upto 31.12.1986. The Union terminated the said settlement by a notice issued in January 1987 and submitted a fresh charter of demands on 26.2.1987, on behalf of the workmen. The charter of demands was admitted in conciliation on 11.12.1987 and on 25.12.1987 the Petitioner-company submitted a counter charter of demand. By an order dated 1.8.1989 passed by the Govt. of Maharashtra, a charter of demand submitted by the Union came to be referred for adjudication to the Industrial Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 and the same reference came to be registered as Reference (IT) No. 52 of 1989. The Union filed its settlement of claim in support of the demands and the Petitioner-Management filed its written statement opposing the demands. The evidence-oral and documentary was adduced by the respective parties before the Tribunal. During the pendency of the reference, an interim settlement was signed on 22.8.1991 and Part-I Award in terms of the same settlement was passed on 26.9.1991.

3. When the charter of demand was submitted, there were about 430 daily rated workers and 250-300 monthly rated workmen working at Parel factory, head

office and the Kavesar factory. On submission of the charter demands on 26.2.1987 there was a lock-out in the factory which was lifted consequent to the settlement dated 17.6.1987 which was met with the Respondent-Union. On account of the said lock-out complaint (ULP) No.648 of 1987 was filed by the Union and the issue regarding wages for the period of lock-out has been settled in terms of the settlement dated 9.8.1989. In terms of the settlement which became part-I Award dated 26.9.1991 the parties were to negotiate and settle the demands under adjudication, but the negotiations failed. It appears that the application for additional interim relief was moved before the Tribunal and some relief was granted by a subsequent Award which was challenged in W.P.No. 1467 of 1995 but the interim Award of the Tribunal was not disturbed by this Court. By the impugned award dated 30th September, 1996, number of demands have been considered favourably i.e. Demand No.2- wage scale and classification, Demand No.6-dearness allowance, leave travel allowance, medical allowance, lunch allowance and the leave revision and the impugned award has been made effective from 1.4.1991. It has been further directed that any amount paid earlier would be adjustable while implementing the impugned award.

4. It was submitted by the learned counsel for the

Petitioner-company that the challenge in this petition is limited only to the extent of revision of pay scales and applicability of the dearness allowance formula on monthly rated staff to the daily rated workmen. He also pointed out that during the pendency of this settlement the factory at Kavesar was closed down and the said closure is a subject matter of challenge in a complaint pending before the Industrial Court. Except 20 workmen all others have been paid their legal dues in terms of the impugned settlement as well. Having settled the dues of the workmen on closure, practically nothing would survive in the challenge to the impugned award but the learned counsel pointed out that in view of the pending complaint challenging the legality of the closure there prevails an uncertainty and in the event the action of closure is interferred by the Industrial Court on any count, the future consequences in terms of additional financial burden on the basis of the impugned award would be writ-large and therefore the company is keen to get its challenge on these two issues i.e. revision of pay-scales and applicability of the dearness allowance formula of the monthly rated staff to the daily rated workmen adjudicated through all the benefits flowing from the impugned award have already been extended to almost all the workmen.

5. On behalf of the Union, in all five witnesses were examined viz. Mr.Narayan Salian Shivanand-acting Joint Secretary of the Union, Mr.Ramchandra Gajanan Oak, Mr.Tukaram Dnanoba Walawalkar-General Secretary of the Union, Mr.Dattatram Ganpat Sawant, Mr.Subhash Parab and Mr.Achut Karhadkar. The Petitioner-Management examined as its witnesses Mr.Gangadhar Talashikar, Industrial Relations Manager, Mr.C.R.Patake, Incharge of Production-Planning Department, S.V.Petdar, Deputy Manager (Manufacturing), and Mr.Sham Bhabe, Director came to be examined.

6. As noted earlier, the challenge to the impugned Award in this petition is confined only to two demands allowed by the Tribunal viz. the revision in pay-scale and the dearness allowance. These two demands under adjudication were as under:

DEMAND NO.2

. All the daily/monthly rated workmen working at Head Office in the factories at G.K.Marg, Parel, village Kavesar Thane and in the godown in Bombay be paid basic wages/salaries at the following scales with effect from 1.1.1987:

Daily rated workmen:

1.	Unskilled-I	Rs.2.00-0.40-3.60-0.50 6.60 - 0.70 -11.50 (17 years)

2.	Unskilled-II	Rs.2.50-0.50-5.00-0.70 8.50-0.80-12.50-0.00 15.20 (18 years)
3.	Skilled	Rs.3.60 - 0.80 - 6.80 -1.00 13.80 - 1.20 - 21.00 (16 years)
4.	Highly skilled	Rs.5.10 - 1.00 - 10.10 - 1.25 -17.60 - 1.50 - 29.60 (18 years)

Monthly rated workmen:

5.	Peons,Watchman Sweepers.	a) Rs.50-11-105-14-175-17 260-20-360 (20 years)
		b) Rs.60-13-125-16-205-19 -300-22-410 (20 years)
6.	Lab Attendants and Cooks	a) Rs.60-14-130-17-215-20- 315-23-430 (20 years)
7.	Driver	a) Rs.70-14-140-18-212-22- 322-26-426-30-516 (20 years)
8.	Overseers	Rs.80-15-110-20-190-25- 315-30-465-35-605 (20 years
9.	Clerks, Tel. Opts.-Cum- Recpt.,Typist Punch Operators Co.Operators, Draftsman, Stenographers Comptist,Shop/ Stores/Canteen Asstt.	Rs.90-20-150-25-250-30-370- 35-545-40-745-45-835 (23 years)
10.	Sectional Heads, Computer Programmers	Rs.275-30-425-40-585-50-

		785-60-965-70-1105 (18 years)
11.	Asstt.Tech. Foreman Jr.Chemist	Rs.145-20-185-25-260-85-435-40-635-45-770 50-870 (20 years)
12.	Sr.Chemist/ Foreman	Rs.300-45-390-55-610-1000-75-1150 (14 years)

DEMAND NO.6

Dearness Allowances:

Basic salary slab	Index No.741-750 D.A.% of basic wages	Variation of 10 of Index 110.
1st 100 Rupees	300%	5.00%
2nd 100 Rupees	125%	1.25%
3rd 100 Rupees	61%	1.25%
4th 100 Rupees	56%	1.25%

Note:

1) Minimum Dearness Allowance to be paid Rs.325/- Rs.5/- per every ten points variation.

2) In addition to D.A. payable at the above scales workmen whose basic salaries/wages are less than RS.100/- per month shall be paid additional 10% D.A. payable in the above scales.

7. Mr.C.U.Singh, the learned counsel for the Petitioner-Management by referring to the reasoning

given in para 11 in support of the demand for revision in wages and paras 24 and 26 in support of the revision in the formula of Dearness Allowance as set out in the impugned Award, submitted that the well established principle of region-cum-industry-cum-capacity to pay, has not been followed by the Tribunal and it has proceeded only on the basis that the Company had the capacity to pay in view of its working results for the period from 1991-92 to 1995-96 as set out in para 7 of the impugned Award. The financial capacity of the employer cannot be considered in isolation when it comes to adjudication for revision in wages and other financial benefits. The first and foremost consideration in such adjudication is region-cum-industry and therefore, the paying capacity of the employer gets a backseat. As per Mr.C.U.Singh, the Tribunal in the instant case, fell in manifest error apparent on the face of the record calling for interference at the hands of this Court in its supervisory jurisdiction. It was submitted that the Petitioner-company and the Respondent-union entered into settlements on 17.8.1974, 7.3.1978, 10.10.1980 and 1.6.1984 and in all these settlements, the demands for revision of wages and other service conditions were settled amicably to the satisfaction of each of the parties. However, the charter of demands submitted in February, 1987 would not be

negotiated upon, due to the adamant attitude of the Union and more particularly the insistence of the dearness allowance formula applicable to the monthly rated staff to be made applicable to the daily rated workmen. It was pointed out that in all the earlier four settlements, the demands pertaining to revision in wage structure as well as the payment of dearness allowances were settled by negotiations and to the satisfaction of each of the parties. The contentions of the Union that the Management had agreed to implement the formula for payment of dearness allowance as applicable to the monthly rated staff has no evidence except the oral statements made in the witness box or in the statement of claim and this was conceded to by the witness of the Union i.e. Mr.Walawalkar who stated in his examination-in-chief as under:

. "I was also taking part in the talks of the settlement, with the Managing Director of the first party. However, the settlement could not be arrived at. The first party was not ready to give staff Dearness Allowances in full to all daily rated employees, but they were ready to give the said benefit to the employees having basic wages upto Rs.300/- only, without arrears. Hence, the settlement could not be arrived at".

In the cross-examination by the Company, Mr.Walawalkar admitted as under:

. "It is correct that earlier settlements with the first party were arrived at and signed from time to time. It is correct that the dearness allowance has been revised of daily rated workers, under the settlements. It is not correct that the said increase in D.A. was by way of revision only and not as a staff D.A. It is not correct that at no point of time assurance was given about applicability of staff D.A. to the daily rated workers. There is no documentary evidence to show that such assurance was given, apart from the agreements of 1980 and 1984, except charter of demands, no other written communication was made with the first party of implementing the so called assurance of applicability of staff D.A."

8. As per the Company, the Industrial Tribunal was perhaps swayed by the evidence that the salaries of the officers and managerial staff had undergone revision. The 1984 settlement contained the following clause regarding reduction in dearness allowance payable to the monthly rated staff as and when circumstances warranted in future:

. "The company will be at liberty to give notice of change on the scheme of D.A. with Bombay Consumer Price Index Rates (old) 2050. In such an event, the parties will negotiate and settle this within a period of one month of giving such notice failing which, the parties shall make joint application to Industrial Tribunal in the prescribed manner under Section 10(2) of the I.D.Act, 1947 for adjudication. The Management’s demand dated 29.11.1983 under Section 9A of the I.D.Act, is enclosed herewith as Annexure to the

settlement which is not pressed".

. Pursuant to the said clause, notice of change dated 6.8.1985 was issued by the Management for the intended reduction in dearness allowance as payable to the monthly rated staff and the same demand was the subject matter of adjudication in Reference (IT) No. 4 of 1987 and by the impugned common Award the same was disallowed. The Union insisted for the monthly rated dearness allowance formula for the daily rated workmen as a counterblast of the notice of change dated 6.8.1985 and more so because the issue of dearness allowance was settled in all the four earlier settlements to the satisfaction of the Union. Therefore, there was no reason for the Tribunal to accept the sole foundation of revision in dearness allowance that the Management had agreed to implement or make applicable the monthly rated dearness allowance formula to the daily rated workers as well on expiry of the settlement of 1.6.1984. It was also submitted that the evidence placed on record by the Management regarding the monthly emoluments payable in other comparable industries in the same business viz. paint manufacturers like Asian Paints Berger Paints, Johnson and Nicolson Paints, Bombay Paints, Garware Paints and Noble Paints etc. Lastly, it has been emphasised by Mr.C.U.Singh that the Industrial Tribunal failed to give any plausible

reasons leave alone satisfactory reasons in support of allowing these two demands in toto and if the adjudicator fails to give reasons in support of the award, such an award cannot be sustained.

9. Mrs.Meena Doshi, the learned counsel for the Respondent-Union on the other hand, submitted that the Union on its part had adduced the necessary oral and documentary evidence to support these two demands along with other demands and the Management on the other hand failed to bring the satisfactory evidence in support of its case that the said two demands could not be granted. Even in support of its case to follow the industry-cum-region formula or region-cum-industry, the Management failed to adduce required evidence and merely the insistence to follow such formula, would not support the challenge to the impugned Award. The additional financial burden as imposed on the Management by allowing these two demands, cannot be considered unreasonable, in view of the sound financial condition of the Petitioner-Company as was brought on record before the Tribunal and the Management failed to prove by imperical data that there was no justification in revision of pay-scales and implementation of the dearness allowance formula applicable to the monthly rated staff for the daily rated workmen as well. Mrs.Doshi also filed synopsis of written arguments

and the charts showing the difference in payment of wages and the dearness allowance consequent to the impugned settlement.

10. Both the parties have relied upon the following decisions referred to by the Tribunal:

1) French Motor Car Company Vs. Their Workmen [1962 II LLJ 744];

2) Greaves Cotton and Company Ltd. Vs. Their Workmen [1964 I LLJ 342];

3) M/s.Polychem Ltd. Vs. R.D. Tulpule [1972 II LLJ 29];

4) Workmen of Blamer Lawrie and Company Ltd. Vs. Blamer Lawrie and Co. Ltd. [1964 LLJ 380];

5) Hindustan Lever Ltd. Vs. D.N.Dongre and others [1994 II CLR 673].

11. So far as the challenge to the first demand i.e. revision in pay-scales is concerned, the Tribunal

noted that there was no revision in the basic wages for the daily rated workmen and monthly rated staff after 1974 settlement had expired. Resultantly, some workers had reached the stage of stagnation in the respective pay-scales and the statement of financial burden placed on record by the Union indicated that by way of annual increment, the total burden would be about Rs.2,31,000/- in respect of all the workmen. There was nothing to contradict these statements. Under these circumstances, the Industrial Tribunal allowed this demand in toto with the following reasonings:

> . "Considering the financial position of the Company, the first party company can bear this burden and will grant these workers after a long lapse of time. Hence, the demand is granted."

12. It is true that the Tribunal has not entered into examining the financial implications of revision in wages as claimed by the Union. It also did not note that the existing payscales were comparable or less than the wage structure prevailing in comparable industries and more particularly the Paint Manufacturing Industries in or around Mumbai and Thane industrial belt. It also failed to consider that the increase in basic would consequently result into further increase in dearness allowance when the

existing mode of payment of dearness allowance itself had a component of linkage with the basic salary. However, these lapses by the Tribunal themselves do not make out a case for interference in the decision of the Tribunal to allow the said demand and it would be necessary to consider the prevailing wage scales and the reasons given by the Tribunal in support of allowing the demand.

13. The Management has placed on record the copies of the settlements till the year 1984 and the last settlement. The first settlement is dated 19.3.1971 and it was made into award by the Industrial Tribunal in Reference (IT) No. 119 of 1968. The basic wage scales were only agreed in the said settlement with effect from 1.1.1971, which are as under:

A. Daily Rated Workmen:

Unskilled :	Rs.1.37-0.10-2-, 37-0, 12.37.0, 12-2-.61-0,13-3,39
Semi-skilled	Rs.1.90-0, 15-2, 80-0.20-4, 20-0.22-4.42
Skilled	Rs.2.60-0, 20-4.00-0-25-6.50
Highly skilled	Rs.3.75-0.25-5.25-0.30-7.65.0. 35-8-.00

B. Monthly Salaried Workmen:

a) Non-Technical :

i) Rs.25-15-330-E.B-20-550.

ii) Senior Clerks, Stenographers, Assistant Stores Supervisor, and administration Assistant:

Rs.145-10-195-12.50-245-E.B.-15 -320-20-460.

iii) Junior Clerks, Telephone Operator/ Receptionist, Senior Overseers, Jr. Draughtsman/Junior Clerk:

Rs.85-7-120-10-160.12.50-210-15-225-E.B. 15-345

(Graduates Jr.Clerk to start with one increment)

iv) Overseers:

Rs.75-5-90-8-114-E.B.-10-144-12 -240

b) Technical :

i) Junior Chemist/Assistant Technical Foreman

Rs.125-10-175-E.B.-15-250-20-390.

ii) Lab.Assistant

Rs.85-7-120-10-160-12.50-247.50

c) Menial Staff:

i) Sepoys/Watchmen/Sweepers/Hamals

Rs.37-2-47-2.50-62-3-92.

ii) Cook:

Rs.48-3-60-5-80-6-110

iii) Lab.Attendant

Rs.44-4-80-5-125.

. Then came the settlement dated 27.8.1974. The basic wage scales were revised as under:

1. Basic wage scales:

a) Daily Rated Workmen:

. After considering the nature of work, work-load involved etc. it is agreed that the daily rated workmen will be classified into three categories, namely unskilled, skilled and highly skilled as opposed to the four categories obtaining heretofore. The wage scales for these categories would be as under:-

Unskilled - Rs.1.55 - 0.15 -2.45 -0.20 - 3.85 - 0.25 -5.10 (18 years)

Skilled - Rs.2.70 - 0.25 -3.95 0.35 -0.35 - 8.15 (17 years)

Highly skilled - Rs.4.00 -0.40 - 5.60 - 0.50 - 8.10 - 0.60 - 10.50 (18 years)

. All the temporary workers who have put in more than 2 years of continuous service and those who have been made permanent during the 12 calender months presiding the date of settlement shall be given one additional increment in their revised scale of pay after adjustment as mentioned in Clause 3 herein below.

b) Monthly Salaried - Non-Technical

. Both the parties after considering the nature of work and some over-lapping duties of the clerical staff considered that these should be only two grades of clerical staff viz. Clerks and Sectional Heads.

. The following scales have been agreed upon -

Clerks, Typists, Tele.] Rs.90-10-120-
Operator/Receiptionist,] 12.5-170-15-260-
Draughtsman, Stenos,] E.B.-20-400-22.50
Comptists, Shop/Store/] -467.50-32.50 - (500
Canteen Assistants] (24 years)

. Note : Graduates in the above will start at Rs.100/- per month and Comptists at Rs.145/- per month and Stenos at Rs.170/- per month.

. Sectional Heads :

Rs.240-15-255-20-375-22.50-420-E.B.-25-520-30-610 (16 years)

. Sepoys, Watchmen, Sweepers.] Rs.40-4-56-5-81-6-117-7-124- (16 years)

. Laboratory Attendant -

. Rs.48-4-64-5-104-7.50-141.50 (17 years)

. Cook Rs.48-4-64-5-104-7.50-141.50 (17 years)

. Driver Rs.65-5-90-7.50-135-10-175--12.50-200 (21 years)

. Punch Operators cum-Verifier Console Operator Programmer] In the clerical Grade abovementioend. The scale for Console Operators and Programmers will be determined after detailed study of the work and in consultation with Mr.R.Radhakrishnan.

Technical Staff:

Asstt.Foreman/Jr. Chemist Rs.125-12.50-175-E.B.-17.50-245-25-445 (16 years)

Foreman/Sr.Chemist Rs.275-30-335-35-475-40-715 (12 years)

Lab.Assistants Rs.85-7-120-10-160-12-50-247.50

Daftari Clerk Rs.75-5-90-8-114-E.B.-10-144-12-240.

. The third settlement signed on 7.3.1978 did not

revise the basic wage scales and the same was the case in the subsequent two settlements dated 10-10-1980 and 1-6-1984. The Tribunal thus rightly observed that after the expiry of 1974 Settlement, there was no revision in basic wage rates.

14. If we consider the wage scales granted by the Industrial Tribunal, it would be seen that the minimum daily rate from 1.55 has been changed to Rs.2, thus an increase of 45 ps. per day, for the unskilled category. In the skilled grade, the starting daily wage was enhanced from Rs.3.2 to 3.60 ps. i.e. a daily rise of 40 ps. In the highly skilled grade, the starting daily wage was enhanced from Rs.4.80 to Rs.5.10, thus a daily rise of 30 ps. The unskilled category grade was given a daily rise of 45 ps. and for the skilled grade, a daily rise of 30 ps. The annual increment varied from 20 to 30 ps. whereas in the same new grade, the annual increment varied from 40, 50 and 70 ps. The annual increment amount was thus doubled and the same is with the skilled and highly skilled grades in the revised wage scales.

. The starting salary in the menial category at Rs.48 has been increased to Rs.50 per month whereas, in the skilled category, there is no change. In both these grades because of the concerned employees had

stagnated on reaching the highest stage, the Tribunal opened the gates so as to remove the stagnation.

15. The Company examined in all four witnesses but hardly brought any imperical data regarding the payscales of daily rated/monthly rated workmen prevailing in comparable industries in the region. Only in the oral depositions of Mr.S.T.Bhabe-Director, the statement below Exh.C-24 was shown to him and he deposed that the personnel department had prepared the said statement showing the wage structures of the employees of the Petitioner-company as well as another company by name Asian Paints after the agreement of 1995 signed by the Asian Paints with their employees. There is nothing placed on record by the Management to show that the wage revision as demanded by the Union and granted by the Tribunal was unreasonable, uneconomical and was likely to have an adverse impact on the regional trends and therefore, was not justified. Merely saying that the Tribunal has not followed the region-cum-industry formula is not sufficient to upset the award passed by the Tribunal. It was necessary for the Company to demonstrate that the demand made by the Union was beyond the financial capacity of the Company, unreasonable and unjustified and the prevailing wage structure itself was on the higher side as compared to other industries in the

region and engaged in the business of Paint manufacturing. Such data in respect of other industries like Asian Paints, Bombay Paints, Shalimar Paints, Noble Paints etc. was not placed before the Tribunal by the Company. In the absence of such data, it cannot be said that the Tribunal committed an error manifest on the face of the record in revising the basic wage scales and allowing the demand made by the Union in that regard. It is true that yearly incremental amount in the grades applicable to the daily rated workmen has been almost doubled but if the Tribunal on the totality of the material available before it, thought it appropriate to consider such a demand and on the face of admitted good financial position of the Company, there is no reason to interfere in the same while exercising the supervisory powers under Article 227 of the Constitution of India.

16. Now coming to the second challenge i.e. extension of the dearness allowance payment formula of monthly staff to the daily rated workmen. In addition to the above mentioned challenges on this issue, the learned counsel for the Company referred to the various charts placed on record in support of his contentions that by granting the said demand, an anomalous situation has arisen. The following chart shows the minimum and maximum rise in total wages

drawn by the daily rated and monthly rated workmen.

Unskilled	Skilled	High skilled	Clerks
Min. 678.00	642.11	854.36	630.22
Max. 3391-66	5514.51	7978.09	4393.34

. In addition the following chart was relied upon to demonstrate the anomalies in the Award:

D.A.at different basic salary of daily rated workmen drawing below Rs.100/-		D.A. at basic salary drawn by daily rated workmen drawing Rs.101/- to 125/-	
Basic	D.A.	Basic	D.A.
Rs.	Rs.	Rs.	Rs.
61.00	4189.00	101.00	3945.00
66.00	4209.00	110.00	4180.00
72.00	4233.00	120.00	4312.00
85.00	4284.00	125.00	4409.00
92.00	4321.00		

. The challenge raised by the Management against the findings recorded by the Tribunal on the demand of dearness allowance appeared to be impressive at the first instance but on a close scrutiny, the said challenge is totally unsustainable. The Tribunal has accepted the following contentions of the Union while

allowing the said demand for dearness allowance payment.

a) Over a period of time, the Management had agreed to bring about the parity in the dearness allowance payment formula between the daily rated workmen and monthly rated staff and the settlements signed from 1974 to 1984 indicated that positive efforts were made by the Management to reduce this difference and when the Union insisted to remove the difference, the Management became adamant and therefore, negotiations failed;

b) The decision of the Supreme Court in the case of **Greaves Cotton Ltd. (Supra)** mandates that the dearness allowance system for the monthly rated and daily rated workers should be the same and;

c) The financial position of the Company indicated that it had the capacity to bear the additional burden on this count as well.

17. Much was made out by the learned counsel for the Company regarding the Union’s contention that the Management had agreed to bridge the gap between the daily rated workmen and monthly rated staff, there was no evidence which could be accepted and therefore, the Tribunal fell in error in pre-supposing that the Management had conceded to such demand. It would be necessary to examine contentions of both the parties how they dealt with this particular issue right from the beginning. In the statement of claim submitted by the Union the

demand of dearness allowance was justified in the following words:

> . This is regarding the dearness allowance that ought to be paid to the workers. Presently all the monthly rated employees are paid dearness allowance on the same basis as has been demanded for daily rated workmen. The Union states that the existing scheme of dearness allowance for daily rated workmen has been in vogue since 1977 and the same has been modified to some extent in subsequent settlements. The monthly rated employees working in the first party company have been getting dearness allowance on the basis of their basic wages. For the first Rs.200/- of basic wage, the dearness allowance works out to Rs.5082.50 at CP 6596 (old series) whereas the daily rated workmen are paid hardly any amount as and by way of dearness allowance. The Union states that the company in principle had agreed to bring the dearness allowance of daily rated workers on par with that of the monthly rated employees. The Company therefore had made revisions in the dearness allowance of the workmen in every settlement. The workers' dearness allowance is linked with the consumer price index and in the last settlement the gap is reduced at Rs.100/- basic wage. Inspite of the same gap between the dearness allowance paid to the worker and monthly rated employees continued, only the peons working in the Head Office are paid accordingly as per the scheme applicable to the monthly rated employees. The Union craves leave to highlight this point at the time of hearing. It is now well accepted principle that workers drawing the same basic wage should be paid dearness allowance irrespective of their being monthly or daily rated staff. This scheme first came to be enunciated in **Greaves Cotton** case. It was then held that peon would have same aspirations as those of any clerical staff and hence, it was held that the pattern of dearness

> allowance should be the same. The same ratio is applicable with full force for daily rated workers also. The demand therefore, stands fully justified".

18. In its Written Statement, the Management opposed the demand of dearness allowance in the following words but did not deny or controvert the contentions of the Union that the Management had made a committment to make the monthly rated staff dearness allowance formula applicable to the daily rated workmen.

. "The Company submits that the existing dearness allowance is more than fair and reasonable. In fact, it is now on the high side and has resulted in the workman getting disproportionate dearness allowance as comparable to other categories of the employees in the Company. It is submitted that as per existing scheme of dearness allowance the workmen are receiving no compensation for rise in consumer price index but in effect has resulted in multiplication of wages due to double linkage far in excess of what warranted for any rise in the consumer price index. It is submitted that neutralisation followed by the existing dearness allowance is already high and it is the submission of the Company that neutralisation exceeds 100%. The Company submits that the Union’s demand is unreasonable and unjustified.".

19. It appears that the Management’s reply had been influenced by the notice of change issued by it for reference in the dearness allowance formula

applicable to the monthly rated staff so as to reduce the amount payable and which was a subject matter by adjudication in Reference (IT) No.4 of 1987. The same demand of the Management has been rejected by the Tribunal in the impugned joint award and this rejection has not been challenged in the instant petition.

. The depositions of Mr.Walawalkar, General Secretary of the Respondent-Union on this point have been reproduced in the earlier portion of this judgment. None of the witnesses of the Management denied the demand of the D.A. formula as contended by Mr.Walawalkar. Even Mr.Bhabe who was the Director when he entered the witness box, did not deny that the Management had agreed to implement the same dearness allowance formula as applicable to the monthly rated staff to the daily rated workmen. It is also evident by reading the settlements from 1974 onwards that the dearness allowance formula was introduced in 1974 settlement and double linkage was introduced in the 1978 settlement. There has been continuously upward revision in the dearness allowance payable to the daily rated workmen whereas the formula of dearness allowance as applicable to the monthly rated staff remained unchanged till 1984 settlement.

. When the Company had given the names of comparable industries in the region, it could have brought on record the details of the dearness allowance scheme that may be existing in such companies. It was also possible for it to bring on record the evidence to show that in comparable industries the separate dearness allowance formula for daily rated workmen and monthly rated staff prevailed and it was a practice in the region. The charts shown by the Company do show that the rise in the dearness allowance on account of the impugned award is much more compared to the monthly rated staff but these figures need not be taken to hold that the demand of dearness allowance has been unreasonable or erratically accepted. The main reason in allowing this demand was that as far as possible there should be similar dearness allowance formula for the daily rated and monthly rated workmen and the Petitioner-company had already implemented such computation in respect of at least some categories of employees and upto the basic salary of Rs.100/- per month. The observations made by the Tribunal after considering the rival submissions made in regard to this demand, appearing in para no.25 of the impugned award are reproduced as under:

. "It is an admitted fact that after 1984, there is no settlement as far as

> the workers are concerned. The service conditions of the officials of the company have been revised 3-4 times after 1987 as has been admitted by Shri.Bhabe in his cross-examination. It is also clear from the record that even for substantial benefits to Directors, have been made by the Company. I have already observed that during the span of 10 to 12 years, there could have been 2-3 settlements as it happened earlier and the workers could have got same benefits of increase in wages thereunder. The observations of the Honourable Lordships in the case of **Greaves Cotton, reported in 1964 1 LLJ 453** are also helpful to the Second Party Union. From the legal position placed before me, material on record and the total circumstances of the case, the Union is justified in making demands about dearness allowance as granted. In view of the discussions, finding and good financial condition of the Company, it is necessary for withdrawal of notice dated 6.8.1985 given by the first Party Company."

. The wording of the above reasoning may not be satisfactory. But the fact remains that the Petitioner-Company failed to discharge its burden while opposing the demand in regard to the payment of the dearness allowance. The Tribunal on the basis of evidence adduced before it by the respective parties has taken the possible view by accepting the Union’s contentions and it cannot be said that same view is grossly erroneous. If the evidence on record had indicated that in the comparable industries in the region, dearness allowance payment to the daily rated workmen was on the lower scale or there was no double

linkage, the Management could have discharged its burden in persuading the Tribunal to reject the demand but this was not done by the Petitioner-company.

20. Though the Company has limited its challenge to only two demands allowed by the Tribunal viz. revision for basic wage scales and dearness allowance payable to the daily rated workmen, the Tribunal has rejected the following demands:

(a) Classification of workers;
(b) Recruitment in unskilled category;
(c) Adjustment of workers in the respective grades by proper classification;
(d) Medical allowances;
(e) Factory allowance;
(f) Education allowances;
(g) Officiating allowance;
(h) Shifting allowance;
(i) First aid allowance;
(j) Fire fighting allowance;
(k) Cash handling allowance
(l) Blue room allowance;
(m) Washing allowance;
(n) Peon allowance;
(o) Travelling allowance;

21. In the case of **French Motor Car (Supra)**, the Apex Court had observed as under:

> . "It is now settled that the principles of industry-cum-region has to be applied by an Industrial Court, when it proceeds to consider the question like wage-strcutures, dearness allowance and similar conditions of service. In applying that principle, Industrial Courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing and generally speaking similar concerns would be these in the same line of business as the concerned with respect to which the dispute is under adjudication. It would not be proper to compare, for example, a small struggling concern with a large flourishing concern."

. In the case of **Greaves Cotton Co. Ltd. (Supra),** the same principle was reiterated in the following words:

> . The basis of fixation of wages and dearness allowance is industry-cum-region, where there are a large number of industrial concerns of the same kind in the same region, it would be proper to put great emphasis on the industry part of the industry-cum-region principle as that would put all concerns on a more or less equal footing in the matter of production costs and therefore, in the matter of competition in the market and this will equally apply to clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs. But

> where the number of comparable concerns is small in a particular region part of the industry-cum-region formula assumes greater importance particularly with reference to clerical and subordinate staff."

. In the case of **Unichem Laboratires Ltd. Vs. Its Workmen [AIR 1972 SC 2332]** a three Judge Bench in para 76 stated thus:

. "From the decisions referred to above, it follows that two principal factors which must weigh while fixing or revising wage scales and grades are: (1) How the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) what wage scales the establishment in question can pay without any undue strain on its financial resources. The same principles substantially apply when fixing or revising the dearness allowance."

In para 114 of the same judgment, Their Lordships proceed to state further as under:

. "The contention that because there was a system of dearness allowance in existence in the Company and therefore there was no justification for revising the same, cannot be accepted. A similar contention raised in **Remington Rand of India Vs. Its Workmen (1962) 1 L.L.J. 287 (SC)**, was rejected by this Court. In that case there was a system

> of dearness allowance providing for payment of not only a rate of percentage on the basic salary but also a variation in the percentage on the rise and fall of the cost of living index. The workmen demanded revision of the scale of dearness allowance on the ground that the cost of living index had increased. The claim was resisted by the Company on the ground that the scheme of dearness allowance then existing in the Company itself provided for an increase in the cost of living index and therefore, no revision is required. This contention was not accepted by this Court. It was held that a claim made by the workmen if otherwise justified, cannot be rejected on the sole ground that a provision is already made in an existing scheme of dearness allowance for adjustment depending upon an increase in the cost of living index. This Court further held that if it is established that the cost of living shows a tendency to rise very high, the workmen would be entitled to claim and there may be a change in the rate of dearness allowance originally fixed, so as to provide for more neutralisation. It was further held that a claim made by the workmen will have to be properly considered and adjudicated upon by the Tribunal. In fact,in that case, it is seen that there was only a 50 point rise in the cost of living index and nevertheless the revision of the scale of dearness allowance by the Tribunal was upheld."

22. In the instant case, though the charter of demands was submitted in February, 1987, by the impugned award, the revision, as allowed, has been effective from 1.4.1991 and the last settlement had expired by the end of December, 1986. No doubt for the intervening period, some interim benefits were

granted by interim awards part-I and II. On further examination of the reasoning given by the Tribunal and the evidence placed on record by the respective parties, it is clear that even the demand allowed by the Tribunal in respect of payment of dearness allowance to the daily rated workmen, does not call for any interference in a writ petition under Article 227 of the Constitution of India as the view taken by the Tribunal does not appear to be unjust, unreasonable and/or patently erroneous on the face of the record.

23. In the result, the challenge to the impugned award to the limited extent of revision in pay-scales and adoption of dearness allowance payments, fails and therefore, the petition is hereby dismissed. Rule discharged, but without any order as to costs.

[B.H.MARLAPALLE, J.]